

**United States Bankruptcy Court
District of New Mexico**

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
EDNA RUTH OLDAKER,
Debtor.

No. 7-99-14502 SR

**MEMORANDUM OPINION ON
UNITED STATES TRUSTEE'S
MOTION TO DISGORGE FEES**

The United States Trustee's Motion to Disgorge Fees (Doc. 7) came before the Court for trial on the merits on Thursday, April 20, 2000. At issue were the fees charged to Edna Ruth Oldaker ("Debtor") by Debtor's counsel in two no-asset consumer chapter 7 cases. The Office of the United States Trustee ("US Trustee") was represented by Leonard Martinez-Metzgar; Debtor's counsel, Glen L. Houston ("Counsel"), represented himself. The trial was conducted in Roswell, New Mexico, immediately following the trial of similar issues in the case of In re Flores, No. 7-99-10541.¹ Much of the evidence presented was common to both trials, and in this case consisted of live testimony in person by Counsel, live testimony by telephone from Oralia Franco ("Trustee" in each of the Chapter 7 cases at issue), the stipulations of the

¹ Some of the testimony in the Flores case, particularly concerning attorney fees, was incorporated by reference into the trial in this case.

parties, affidavits of other counsel concerning fees submitted by both parties, the deposition of Debtor taken by the US Trustee², and a compilation of data produced from court files submitted by the US Trustee. Having considered the evidence and the argument of the parties, the Court issues this memorandum opinion as its findings of fact and conclusions of law pursuant to Rule 7052.

FACTS

There was little or no dispute concerning much of the evidence. On March 26, 1998, Counsel filed a Chapter 7 petition on behalf of the Debtor (No. 7-98-11882 SR) ("First Case"). The Rule 2016 statement in the First Case recited that Counsel agreed to accept \$1,309.78 for fees, and that he received \$450.00 of that amount prior to the filing. Counsel testified that, in addition to the \$1,309.78 (fees of \$1,070.50, 6% gross receipts tax (\$64.28), plus the then current \$175.00 filing fee), the amount actually charged included a finance charge of \$139.76, resulting in a total fee of \$1,449.49. Counsel also testified that to insure payment

² The US Trustee objected to the use of the entire deposition of the Debtor, in lieu of the Debtor's personal appearance as a witness. The Court set a deadline for the US Trustee to object to those portions of the deposition which should not be admitted. The US Trustee filed no objections, timely or untimely, and therefore the Court has reviewed the entire deposition, as tendered by Counsel.

of the remainder of the debt he took a security agreement on the Debtor's personal household goods. Although the security interest was not disclosed in the Rule 2016 statement, it was clearly disclosed in the answer to question 10 of the Statement of Affairs.³ Counsel also testified that he received payment at the rate of \$75.00 per month thereafter; the Debtor testified that she paid the entire bill.

Deposition of Edna Ruth Oldaker, taken April 6, 2000

("Deposition"), p. 12, lines 7-14.

At the §341 meeting, the Trustee, asking her standard questions, quickly elicited from the Debtor that she had transferred her home to her son about a month prior to the bankruptcy filing. This transfer was not listed in the statement of affairs or in the schedules. Counsel did not know of the transfer until the information was disclosed at the §341 meeting. Counsel told the Trustee he would dismiss the case, presumably to fix the problem. The Trustee requested information on the transfer. When the Trustee had not received either the motion to dismiss or the information

³ Of course the security agreement should have been disclosed in the Rule 2016(b) statement, as should the interest charge. Counsel's filing in the subsequent case (this one) had the same shortcomings. Although the US Trustee did not seek relief concerning those deficiencies, Counsel is now on notice not to repeat those mistakes.

more than a month after the §341 meeting, she filed an adversary to get the house from the son, and later hired a realtor to market the house if it came back into the estate. Counsel attempted to amend the exemption schedules, but the Trustee opposed the amendment, on the grounds that the transfer was voluntary. See 11 U.S.C. §522(g)(1). Counsel finally delivered the information to the Trustee about the transfer, and with the Trustee's approval, got the case dismissed.⁴

On August 5, 1999, this case (No. 7-99-14502) was filed. Taking into account the transfer of the house back to the Debtor in between filings, the schedules and statement of affairs in this case are somewhat more detailed and mostly more accurate than those filed in the First Case, but by and large do not differ significantly from them.⁵ The Debtor testified that the schedules from the second case (this case) were "copied off the other one...." Deposition, page 15, line 8; see also id., page 19, lines 10-16.

⁴ The Debtor explained that she transferred the home because the hospital was dunning her for a bill incurred by her (apparently) adult son for services rendered to him, and that the hospital representative had threatened to place a lien on the home and dispossess her in order to get the bill paid.

⁵ Schedule C exempts the house. The schedules show it to be free and clear, and value it at \$4,000.

The petition itself erroneously states "None" in response to the question about whether the Debtor has filed a prior bankruptcy case within the preceding six years. The Rule 2016(b) statement recites that Counsel agreed to accept \$1,070.55 for services, that he received no part of the fee prior to the filing, and that he took a security agreement on the Debtor's Zenith VCR and television and the Whirlpool refrigerator. The Debtor understood that the collateral securing payment of the debt consisted of her stove, refrigerator, microwave, table with four chairs, television, sofa, coffee table, bookcase, dresser bed, chest, piano, sewing machine and VCR. Deposition, p. 17, line 14 through p. 19, line 9. Schedule J budgets \$75.00 per month for payment to Counsel.⁶ Consistent with statements of her income of \$9,501 in 1998 and \$9,309 in 1997, Schedule I shows annual income of \$9,084. At the trial Counsel testified that the fee arrangement was essentially the same as in the First Case, so

⁶ Schedules I and J show a post petition monthly deficit of \$79. Such a deficit calls into question the usefulness of the filing. (In this instance, the deficit will be virtually eliminated by the deletion of the \$75 payment to Counsel. And the refund of fees to the Debtor, which this Court is ordering, will further enhance the Debtor's minimal cash flow.) Counsel testified that he advised the Debtor that she did not need to file, but that she insisted on doing so for the peace of mind it would bring in connection with the hospital bill for which she was being dunned.

that the total fee over time would be \$1,449. In other words, filing this case would cost the Debtor about 1/6 of her annual income, as was the case for the filing of the First Case.

DISCUSSION

At the outset, it is important to clarify what this memorandum opinion addresses and what it does not. The US Trustee's motion was directed primarily at the amount of the maximum fee that ought to be charged for a typical chapter 7 case, in order to determine what cases to challenge for excessive fees. Yet the evidence presented in this case raised serious questions about the conduct of these cases by Counsel. Because the US Trustee's request for relief was limited to the fee issue, and because this opinion will constitute a warning to Counsel about the way he handles cases in the future, the Court will not impose any sanctions or award any relief other than that requested by the US Trustee. But it should be clear to Counsel, and others reading this opinion, that both the Debtor and the bankruptcy system have been very poorly served by Counsel in these cases, and the conduct of future cases by Counsel in a similar fashion will result in an award of no fees and/or sanctions. See, e.g. Jensen v. United States Trustee (In re Smitty's Truck Stop, Inc.), 210 B.R. 844, 848 (10th Cir. B.A.P. 1997)("[A]n attorney

who fails to comply with the disclosure requirements of § 329 and Rule 2016(b) forfeits any right to receive compensation for services rendered on behalf of the debtor and may be ordered to return fees already received."); see also United States Trustee v. Bresset (In re Engel), 246 B.R. 784, 794 (Bankr. M.D. Pa. 2000)(Attorney has duty to review documents with clients before they become a part of the public record and has a duty to amend shortcomings; casual approach to schedules justifies issuance of sanctions.)

The US Trustee's Motion to Disgorge Fees is based on Code section 329 and Bankruptcy Rule 2017. Bankruptcy Code Section 329 provides:

a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to -

- (1) the estate, if the property transferred -
 - (A) would have been property of the estate;
 - or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
- (2) the entity that made such payment.

Federal Bankruptcy Rule 2017 provides:

(a) Payment or transfer to attorney before order for relief.

On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.

(b) Payment or transfer to attorney after order for relief.

On motion by the debtor, the United States trustee , or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

Under this framework, once a party in interest or the Court on its own motion questions fees, section 329(b) authorizes the Court to assess the reasonable value of the services counsel provided to the debtor and to compare that value with the amount the debtor paid or agreed to pay for the attorney's services. In re Geraci, 138 F.3d 314, 318 (7th Cir. 1998). If the Court finds that the amount paid and/or promised exceeds the reasonable value of the services, the Court can cancel the agreement and order the return of the excess. 11 U.S.C. § 329(b); In re Mahendra, 131 F.3d 750, 758 (8th Cir. 1997) cert.

denied 523 U.S. 1107 (1998). No further findings by the Court are required to order disgorgement; the Court need not find "overreaching" or an impact on the bankruptcy estate before counsel's fees may be reduced under section 329(b). Geraci 138 F.3d at 320.

In making the "reasonable value" determination, the Court is to be guided by section 330⁷ of the Bankruptcy Code, which sets forth factors that Congress deemed relevant to an assessment of the value of professional services. Id. See also 3 Collier on Bankruptcy, ¶ 329.04[1][c] ("The court, in assessing the reasonable value of the services rendered, will be governed by the criteria set forth in section 330.")

Once a question is raised about the reasonableness of the

⁷Section 330(a)(3) provides:

(A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

attorney's fee under section 329, it is the attorney himself or herself that bears the burden of showing that the fee is reasonable. Geraci 138 F.3d at 320; Mahendra, 131 F.3d at 757. The answer to the question is a factual determination made by the Court on a case by case basis. Geraci v. Hopper (In re Day), 213 B.R. 145, 150 (C.D. Il. 1997).

Under the law of the Tenth Circuit, the reasonableness of attorneys' fees is determined by inquiring into the factors set forth in the case of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). First National Bank of Lea County v. Niccum (In re Permian Anchor Services, Inc.), 649 F.2d 763, 768 (10th Cir. 1981). Those factors are:

1. The time and labor involved. Johnson, 488 F.2d at 717.

The time spent should not be the sole consideration, but is a necessary ingredient⁸. The trial judge should weigh

⁸Arguably, this is the most important ingredient. See Boddy v. United States Bankruptcy Court, Western District of Kentucky (In re Boddy), 950 F.2d 334, 338 (6th Cir. 1991):

Without at least some discussion of the lodestar factors, the award of attorney's fees in Chapter 13 bankruptcy cases in the Western District of Kentucky becomes arbitrary and unreviewable. ... The court can legitimately take into account the typical compensation that is adequate for attorney's fees in Chapter 13 cases, as long as it expressly discusses these factors in light of the reasonable hours actually worked and a reasonable hourly rate. The bankruptcy court also may exercise its discretion to consider other factors...

(citing Harman v. Levin (In re Robertson), 772 F.2d 1150, 1152

the hours claimed against his own knowledge, experience, and expertise. A distinction should be made between legal work and investigation, clerical work, compilations, and other work which can be performed by non-lawyers.

2. The novelty and difficulty of the questions. Id. at 718. Cases of first impression require more time and effort, and should be appropriately compensated.
3. The skill requisite to perform the legal service properly. Id. The judge should closely observe the work product, attorney's preparation, and general abilities.
4. The preclusion of other employment by the attorney due to acceptance of the case. Id. This consideration should examine business turned away due to either conflicts or time constraints.
5. The customary fee. Id. The customary fee for similar work in the community should be considered.
6. Whether the fee is fixed or contingent. Id. The fee agreement is helpful to demonstrate the attorney's expectations. The criterion for the court is not what the parties agreed, however, but what is in fact

n. 1 (4th Cir. 1985)(applying 12 factors to fee determinations.))

reasonable.

7. Time limitations imposed by the client or the circumstances. Id. Priority work that delays other legal work is entitled to a premium.
8. The amount involved and the results obtained. Id. The fee award should reflect the relief granted.
9. The experience, reputation, and ability of the attorneys. Id. Generally, more experienced attorneys or those with specializations may be entitled to higher fees.
10. The "undesirability" of the case. Id. at 719. Any economic impact on an attorney's practice from a case can be considered when awarding a fee.
11. The nature and length of the professional relationship with the client. Id. A lawyer may vary his fee for similar work in the light of the professional relationship of the client with his or her office.
12. Awards in similar cases. Id. The reasonableness of a fee may be considered in the light of awards made in similar cases within and without the court's circuit.

See also In re Ewing, 167 B.R. 233, 236 n. 3 (Bankr. D. N.M. 1994)(applying twelve Johnson factors).

The Court has reviewed Counsel's fee under the standards set out in Johnson:

1. The time and labor involved. Counsel did not present billing records for this case. In fact, during his testimony in Flores he stated that he did not keep time records for his flat fee bankruptcy cases. He did testify, however, about the time he, his paralegal, and a contract attorney devoted to the case, suggesting that he spent considerable time. The Debtor's testimony strongly suggests Counsel spent relatively little time on either case. See Deposition, page 4, line 11 to page 12, line 7 (her first two meetings were with paralegals and she never met counsel until after she filed); page 14, lines 19-23 (a woman takes care of the bankruptcy and you see counsel "after they gets everything down") And as discussed below, the Court finds that much of this time was necessary only because Counsel failed to perform his duties adequately at the outset of the First Case. In any event, the law is clear that the burden of proof for reasonableness of attorney's fees is on the attorney. The Court will, for this case, assume that Counsel could review his notes and reconstruct time records that would justify the fee awarded below.
2. The novelty and difficulty of the questions. The case had no novel issues. A review of the file shows that

this case should have been a garden variety no-asset case. Debtor's total assets were \$8,255. She had one vehicle with a lien against it for a debt she intended to reaffirm. She had no priority debts, and \$28,000 of unsecured debts owed to five creditors. It is true that a problem developed with the first bankruptcy case because a transfer of the house, worth \$4000, was not divulged to the attorney before the first meeting of creditors. However, Debtor testified at her deposition that she had not previously been asked this question. See Deposition, page 8, lines 20-24; page 9, lines 3-8; page 10, line 24 to page 11, line 12. Had Debtor been made aware of the expectations of the bankruptcy system, and had she been directly asked this question, much of the time spent on filing two cases would have been avoided.

3. The skill requisite to perform the legal service properly. The Court finds that relatively minimal skills and experience would be required to file this case and secure the Debtor's exemptions and discharge.
4. The preclusion of other employment by the attorney due to acceptance of the case. No evidence was presented on this issue.

5. The customary fee. Counsel implicitly argues that the customary fee should be that charged in Hobbs, New Mexico. The Trustee implicitly argues that the customary fee should be that charged for southeastern New Mexico. The Court accepts the broader view. As discussed below, the customary fee for simple chapter 7 cases ranges from about \$540 to about \$950. See text accompanying footnote 14 below. Counsel's fee was well outside the customary range.
6. Whether the fee is fixed or contingent. The fees quoted in both cases were flat, fixed fees.
7. Time limitations imposed by the client or the circumstances. There appeared to be no time constraints upon the filing because the debtor was judgment proof.
8. The amount involved and the results obtained. The "amount-involved" criterion does not really pertain to no-asset consumer bankruptcy cases. The relief sought was securing for the Debtor her exemptions and a discharge of debts. The debtor obtained this relief, and the result is average. On the other hand, this factor actually works against Counsel in that he failed to obtain part of the relief that the Debtor should expect (the exemption of the home, to give the Debtor her peace

of mind) by his failure to do the proper prefiling inquiry and transfer, and then sought to remedy his own mistake by charging the Debtor for a second filing.

9. The experience, reputation, and ability of the attorneys. Counsel has practiced bankruptcy for forty years in New Mexico. He would be entitled to a higher fee based on his experience and length of experience, were this a case that called for it.
10. The "undesirability" of the case. This case was not undesirable.
11. The nature and length of the professional relationship with the client. There is evidence was that Counsel became acquainted with the Debtor when she came in to file the First Case, about March 1998, and continued the relationship when the First Case needed to be dismissed and the second filed.
12. Awards in similar cases. This issue will be discussed in greater detail under the heading of "Trustee's Exhibit 3."

Congress' intent was that compensation for bankruptcy representation be commensurate with the fees awarded for comparable services in non-bankruptcy cases. Geraci, 138 F.3d at 319. The comparison is difficult, however, in situations

where bankruptcy representation is undertaken on a flat fee basis. Id. In these situations, examination of the comparable charges for similar bankruptcy cases in the locale is an appropriate inquiry. Id. However, the reasonable value of services

is not ... always the price that a willing debtor has agreed to pay a willing attorney in the marketplace, for by enacting sections 329 and 330 of the Code, Congress placed limits on the role the market will be permitted to play in setting professional fees in bankruptcy cases.

Id. at 320. For that reason, Trustee's Exhibit 3 takes on added significance.

Trustee's Exhibit 3

US Trustee Exhibit 3 from Flores ("Trustee's Exhibit 3"), admitted in this case as well, is a compilation of data drawn from the records of the District of New Mexico Bankruptcy Court case files. Specifically, the exhibit consists of three (or five) parts: the Chapter 7 Section 341 meeting dockets for Roswell for February 16 and 17, 2000, the Rule 2016(b) disclosure statements contained in each file listed on each docket, and a compilation sheet showing the name of the debtor and case number of each case, the debtor's attorney, the town in which the debtor's attorney's office is located, and the

amount shown on the Rule 2016(b) statement.⁹

The Court has sorted the data submitted in Trustee's Exhibit 3 for purposes of this decision. Eighty (80) cases¹⁰ contain data about fees. Attached to this opinion are, for the eighty cases, (a) the first two pages of Trustee's Exhibit 3 (the two-page listing of debtor, case number, attorney (but excluding Counsel - see footnote 9), office city and amount charged); and, for all 106 cases, (b) a sort of the cases by §341 order, (c) a sort by office city, and (d) a sort by fee amount.

Admittedly the data are not sophisticated. For example,

⁹ Counsel objected to the admission of Trustee's Exhibit 3 on the grounds that it was not a complete or accurate compilation. When asked to specify the shortcomings, Counsel pointed out that in two instances in the exhibit his Rule 2016(b) statement was not included for the two cases in which he appeared as counsel. The Court then admitted the exhibit subject to Counsel reviewing the exhibit for inaccuracies and submitting objections to the Court. Counsel never tendered any further objection, and therefore the Court admitted and relied on the data in the exhibit, recognizing its minor inaccuracies.

¹⁰ The US Trustee relied on the Rule 2016(b) statements it received in its office in connection with each case. Out of a total of 106 cases or files, the US Trustee did not receive Rule 2016(b) statements in 26. A review of the §341 dockets shows that of these 26, 5 were cases by debtors representing themselves ("pro se"), and of the remaining 21 cases, several had been converted from other chapters presumably with the same counsel continuing to represent the debtor. The "new" cases with counsel who did not serve the Rule 2016(b) statements on the US Trustee (including one by Counsel) are a concern but will not be addressed in this case.

they cover only one two-day "snapshot". It cannot be determined from the Rule 2016(b) statements filed whether some of the figures contained therein include the filing fee; e.g., it may well be that the \$1,400 "fee" shown in the highest case included the \$200 filing fee, whereas it is unlikely that the \$470 figure included the filing fee.¹¹ As clarified by the affidavit information set out in page 19 below, the \$490 figure for four cases did not include the filing fee. And of course the Rule 2016 statements cannot disclose the quality of the representation in each case. (The Court has assumed that in each of the cases listed on Trustee's Exhibit 3 the representation was sufficient to accomplish each debtor's basic goal of obtaining a discharge and reasonably maximizing his or her exemptions.)

However, even taking into account the limitations of the data, they are sufficient to reach some conclusions. For example, the lowest fee charged was \$470 by a Roswell attorney; the next four lowest fees charged were \$490 each by

¹¹ Some of the Rule 2016(b) statements recited in part that "\$200.00 of the filing fee in this case has been paid." That statement could be taken to mean the filing fee has been delivered ("paid") to counsel or has been delivered to the court with the petition.

a Farmington¹² attorney. The highest fee charged was by a Portales attorney, \$1,400, followed by two cases of a Hobbs attorney at \$1,300 each, and a \$1,200 fee by the Portales attorney. The average fee for the eighty cases is \$742; the median fee is \$688.¹³ The general range for fees was \$540 to \$950¹⁴.

Each party also submitted affidavits dated in April, 2000 from attorneys who represented chapter 7 debtors in, inter alia, the Roswell area. Counsel's affidavits were from the following counsel, all of whom opined (not surprisingly) that the fees that they charged for a chapter 7 case, exclusive of adversary proceedings, were reasonable: Bruce A. Larsen of

¹² As pointed out above, a "Farmington attorney" is one whose office is located in Farmington but is representing a debtor appearing at the Section 341 meeting in Roswell. The location of the 341 meeting is determined by what city or town (or village) the debtor shows in his or her petition as the residence. Thus the cases selected for inclusion in Trustee's Exhibit 3 are all of debtors from towns in Chaves, Lea, Eddy, Curry, Roosevelt, De Baca and Otero Counties, and from towns in parts of Lincoln, Quay, Guadalupe, Socorro and San Miguel Counties. Clerk's Practice and Procedure Guide, Appendix 3, at 3-xliiii (2nd Ed. October 1, 1996). These towns are all located generally speaking in the southeast quadrant of the state.

¹³ Given that it is likely that some of the figures also include the filing fee, see note 11 above, the average and the median counsel fees are probably somewhat lower than the figures show.

¹⁴ Eight cases showed fees of less than \$540 and seven of more than \$950.

Hobbs (minimum fee is \$1,000), Max Houston Proctor of Hobbs (\$1,200 plus costs), Tommy D. Parker of Hobbs (\$1,300 plus costs) and Joseph Erwin Gant, III of Carlsbad (\$1,000 plus tax, costs and filing fees). The US Trustee's affidavits were from the following counsel for a consumer chapter 7: Kemp S. Lewis of Farmington (\$740, which includes the filing fee and tax), Harry G.W. Griffith of Albuquerque (\$800, which includes the filing fee and tax), Milton Zentmyer of Clovis (\$800 in addition to the filing fee), and Bill Gordon of Albuquerque (\$495 plus tax). The data from these affidavits appears to be included in the Trustee's Exhibit 3 data.

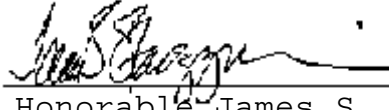
Based on the foregoing, the Court concludes that a charge of \$800 (which figure does not include any filing fees, specifically the current \$200 mandated by Congress), plus applicable gross receipts tax, is an amount which ordinarily will not be subject to examination by the Court (as to amount). Nothing in this opinion is intended to establish \$800 as the "floor" for chapter 7 fees; indeed, as the data from the Albuquerque and Farmington attorneys suggest (median fees \$550 and \$490 respectively), it may be that market competition results in fees provided at a lower cost to the debtor. On the other hand, a debtor's attorney is not precluded from charging more than the \$800. Of course, that

fee may draw an objection, which will require the attorney to justify the fee. And the justification of the fee may require an accounting of all the work done and the entire payment received or agreed to be paid, similar to a fee application.

Applying the foregoing to the facts of this case, the Court accepts the US Trustee's characterization of these two cases together as essentially a single ongoing effort, finally successful, to obtain a discharge for the Debtor and, the Court adds, to claim her exemptions. In consequence, Counsel will be allowed a fee of \$800, plus applicable gross receipts tax, as the total for his services in both cases. The Court will therefore enter an order, in both cases, requiring counsel (1) to refund to the Debtor all but \$1,048, comprised of \$800 in fees¹⁵, plus gross receipts tax of \$48 (at 6%), and a single \$200 filing fee, which Counsel testified that he paid, (2) to file an accounting of the funds received from the Debtor and refunded to her and (3) to file (and deliver to the Debtor) releases for any lien he has taken on any of her property. Counsel will also be required to file an affidavit within sixty days from the entry of this order, attesting to

¹⁵ The Court has serious doubts about the propriety of charging interest on Chapter 7 fees. However, in this case there is no need to rule on the issue since the Rule 2016(b) statement did not set forth that interest would be charged. Thus the Court will disallow interest on this limited ground.

his fulfilment of the requirements of this order with a copy of the accounting attached.




Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties.

Glen L. Houston
1304 W. Broadway Place
Hobbs, NM 88240

Leonard K. Martinez-Metzgar
PO Box 608
Albuquerque, NM 87103-0608



Mary B. Anderson

SUMMARY OF ATTORNEYS' 2016 STATEMENTS

Case Name	Case Number	Attorney's Name	Location	2016 Charge
Homan, Don	00-10776	Harry Griffith	Albuquerque	\$600.00
Franco, Jose	00-10753	Mike Gomez	Roswell	\$900.00
Perez, Tony	00-10755	Mike Gomez	Roswell	\$750.00
Ruiz, Frank	00-10754	Mike Gomez	Roswell	\$900.00
Eoff, William	00-10325	Mike Gomez	Roswell	\$900.00
Mendoza, Jose	00-10756	Mike Gomez	Roswell	\$900.00
Armendariz, Charles	00-10358	Mike Gomez	Roswell	\$900.00
Baeza, Nora	00-10355	Mike Gomez	Roswell	\$875.00
Horace, Ruthell	00-10354	Mike Gomez	Roswell	\$875.00
Espinoza, Tracy	00-10479	Mike Gomez	Roswell	\$900.00
Rodriguez, Sara	00-10480	Mike Gomez	Roswell	\$900.00
Nieto, Efrain	00-10240	Dorsett Bennett	Roswell	\$945.50
Worley, Alan	00-10237	Dorsett Bennett	Roswell	\$945.50
Bell, Katherine	00-10364	Dorsett Bennett	Roswell	\$835.00
Hobbs, Doyle	00-10482	Dorsett Bennett	Roswell	\$945.50
Lassiter, Jeana	00-10537	Dorsett Bennett	Roswell	\$945.50
Sutherland, John	00-10568	Dorsett Bennett	Roswell	\$860.00
Mills, Allen	00-10618	Dorsett Bennett	Roswell	\$945.50
Davis, Christopher	00-10320	Kemp Lewis	Farmington	\$690.00
Macias, Fernando	00-10323	Kemp Lewis	Farmington	\$690.00
Beams, Song Su	00-10507	Kemp Lewis	Farmington	\$740.00
Luker, Kimberly	00-10608	Kemp Lewis	Farmington	\$690.00
Rodriguez, Efrain	00-10605	Kemp Lewis	Farmington	\$740.00
O'Brain, Jeffrey	00-10604	Kemp Lewis	Farmington	\$690.00
Dunlap, Jim	00-10321	Clarke Coll	Roswell	\$965.00
Lopez, Joe L.	00-10625	Clarke Coll	Roswell	\$940.00
Young, Gaylan	00-10614	Clarke Coll	Roswell	\$688.00
Arellanes, Jose	00-10168	Clarke Coll	Roswell	\$550.00
Peralta, Jody	00-10524	Clarke Coll	Roswell	\$688.00
Garza, Betty	00-10716	Clarke Coll	Roswell	\$688.00
Stubblefield, Alan	00-10634	Clarke Coll	Roswell	\$688.00
Andrews, Vira	00-10360	Trey Arvizu, III	Roswell	\$550.00
Lara, Santiago	00-10362	Trey Arvizu, III	Roswell	\$550.00
Aldaco, Josie	00-10225	Trey Arvizu, III	Roswell	\$550.00
Simmons, Joe	00-10226	Trey Arvizu, III	Roswell	\$550.00
Morales, Lorena	00-10259	Trey Arvizu, III	Roswell	\$550.00
Elizondo, Jaime	00-10416	Trey Arvizu, III	Roswell	\$550.00
Rodriguez, Jerry	00-10449	Trey Arvizu, III	Roswell	\$550.00
Yanez, Francisco	00-10621	Trey Arvizu, III	Roswell	\$550.00
Chavarria, Raul	00-10473	Trey Arvizu, III	Roswell	\$550.00
Carnes, Paul	00-10534	Trey Arvizu, III	Roswell	\$550.00
Ezell/DeMerritt	00-10689	Trey Arvizu, III	Roswell	\$550.00
Taylor, Ronald	00-10692	Trey Arvizu, III	Roswell	\$550.00
Gorrell, Shannon	00-10314	Bill Gordon	Albuquerque	\$550.00
Kidd, Charles	00-10596	Bill Gordon	Albuquerque	\$550.00
Flores, Mariano	00-10376	Bill Gordon	Albuquerque	\$550.00
Conover, Rodney	00-10425	Bill Gordon	Albuquerque	\$550.00
Sleeper, Robert	00-10735	Bill Gordon	Albuquerque	\$550.00
Rodriguez, Tracy	00-10711	Eric Coll	Roswell	\$688.00
Becerra, David	00-10221	Eric Coll	Roswell	\$688.00
Hoit, James	00-10366	Randy Knudson	Portales	\$1,400.00
Krach, William	00-10365	Randy Knudson	Portales	\$1,200.00
Yannotti, Constance	00-10560	Randy Knudson	Portales	\$1,000.00
Piepkorn, Jared	00-10718	Randy Knudson	Portales	\$800.00
Navarrette, Joella	00-10359	Michael Carrasco	Carlsbad	\$918.00
Youngblood, Benny	00-10357	Frank Gallegos	Roswell	\$470.00
Cummings, Timothy	00-10619	Charles Hawthorne	Ruidoso	\$750.00

SUMMARY OF ATTORNEYS' 2016 STATEMENTS CONT. -- PAGE 2

Case Name	Case Number	Attorney's Name	Location	2016 Charge
Barber, Lemuel	00-10222	Tommy Parker	Hobbs	\$1,300.00
Medina, Juan	00-10283	Tommy Parker	Hobbs	\$1,300.00
Baca, Belynda	00-10430	Patricia Ortiz	Albuquerque	\$650.00
Dubas, Todd	00-10678	Matthew Bristol	Roswell	\$775.00
Cathey, Stephen	00-10476	Matthew Bristol	Roswell	\$725.00
Langenegger, Bess	00-10474	Matthew Bristol	Roswell	\$500.00
Torrez, EvaMarie	00-10475	Matthew Bristol	Roswell	\$625.00
Gonzales, Teresa	00-10297	Matthew Bristol	Roswell	\$700.00
Ridgway, Helen	00-10298	Matthew Bristol	Roswell	\$500.00
McKittrick, McK	00-10713	David Rupp	Alamogordo	\$875.00
Cavner, Elmer	00-10483	Bruce Larsen	Hobbs	\$900.00
Phillips, Bryon	00-10486	Bruce Larsen	Hobbs	\$1,200.00
Talamantes, O.	00-10565	Ramon Garcia	Roswell	\$839.00
Marquez, Librado	00-10266	Ramon Garcia	Roswell	\$814.00
Sanchez, Mary	00-10265	Ramon Garcia	Roswell	\$675.00
McLaughlin, C.	00-10749	Richard Hawthorne	Ruidoso	\$605.61
Holder, Jerry	00-10757	Richard Hawthorne	Ruidoso	\$750.00
Bower, Mark	00-10715	Milton Zentmeyer	Clovis	\$875.00
Sosa, Martin	00-10664	Milton Zentmeyer	Clovis	\$875.00
Hubbard, Jacqueline	00-10610	Bruce Fogarty	Clovis	\$500.00
King, Timothy	00-10612	Bruce Fogarty	Clovis	\$600.00
Collins, Jack	99-16417	Marci Beyer	Roswell	\$550.00

EXHIBIT B - FEES IN 341 MEETING ORDER

99-14321	Albuquerque	
00-10776	Albuquerque	600
00-10753	Roswell	900
00-10755	Roswell	750
00-10754	Roswell	900
00-10749	Ruidoso	606
00-10756	Roswell	900
00-10731	Albuquerque	
00-10735	Albuquerque	550
00-10757	Ruidoso	750
00-10718	Portales	800
00-16611	Albuquerque	
00-10689	Roswell	550
00-10692	Roswell	550
00-10716	Roswell	688
00-10711	Roswell	688
00-10713	Alamogordo	875
00-10715	Clovis	875
00-10640	Roswell	
00-10678	Roswell	775
00-10634	Roswell	688
00-10631	Hobbs	
00-10666	Lovington	
00-10664	Clovis	875
00-10610	Clovis	500
00-10612	Clovis	600
00-10608	Farmington	490
00-10604	Farmington	490

00-10605	Farmington	540
00-10886	Albuquerque	
00-10621	Roswell	550
00-10618	Roswell	946
00-10625	Roswell	940
00-10614	Roswell	688
00-10596	Albuquerque	550
00-10619	Ruidoso	750
00-10225	Roswell	550
00-10226	Roswell	550
00-10240	Roswell	946
00-10237	Roswell	946
99-16417	Roswell	550
00-10222	Hobbs	1300
00-10259	Roswell	550
00-10297	Roswell	700
00-10221	Roswell	688
00-10266	Roswell	814
00-10265	Roswell	675
00-10283	Hobbs	1300
00-10298	Roswell	500
00-10321	Roswell	965
97-15377	Roswell	
00-10314	Albuquerque	550
00-10320	Farmington	490
00-10323	Farmington	490
00-10360	Roswell	550
00-10362	Roswell	550
00-10364	Roswell	835

00-10325	Roswell	900
00-10366	Portales	1400
00-10365	Portales	1200
00-10359	Carlsbad	918
00-10357	Roswell	470
00-10358	Roswell	900
00-10355	Roswell	875
00-10354	Roswell	875
00-10353	Roswell	
00-10411	Roswell	
00-10406	Roswell	
00-10376	Albuquerque	550
98-16637	Albuquerque	
00-10386	Hobbs	
00-10416	Roswell	550
00-10449	Roswell	550
00-10425	Albuquerque	550
98-12961	Farmington	
00-10430	Albuquerque	650
00-10417	Hobbs	
00-10478	Roswell	
00-10473	Roswell	550
00-10476	Roswell	725
00-10474	Roswell	500
00-10475	Roswell	625
00-10479	Roswell	900
00-10472	Roswell	946
00-10480	Roswell	900
00-10483	Hobbs	900

00-10486	Hobbs	1200
00-10487	Clovis	
00-10509	Roswell	
98-17785	Roswell	
00-10168	Roswell	550
00-10524	Roswell	688
00-10481	Roswell	900
00-10507	Farmington	540
00-10534	Roswell	550
00-10528	Roswell	
00-10535	Roswell	
00-10537	Roswell	946
00-10532	Roswell	
99-13493	Clovis	
00-10563	Roswell	
00-10568	Roswell	860
00-10569	Roswell	
00-10562	Roswell	
00-10565	Roswell	839
00-10560	Portales	1000

EXHIBIT C - FEES BY ATTORNEY'S CITY

00-10713	Alamogordo	875
00-10731	Albuquerque	
98-16637	Albuquerque	
00-10886	Albuquerque	
99-14321	Albuquerque	
00-16611	Albuquerque	
00-10735	Albuquerque	550
00-10314	Albuquerque	550
00-10596	Albuquerque	550
00-10425	Albuquerque	550
00-10376	Albuquerque	550
00-10776	Albuquerque	600
00-10430	Albuquerque	650
00-10359	Carlsbad	918
00-10487	Clovis	
99-13493	Clovis	
00-10610	Clovis	500
00-10612	Clovis	600
00-10664	Clovis	875
00-10715	Clovis	875
98-12961	Farmington	
00-10604	Farmington	490
00-10323	Farmington	490
00-10608	Farmington	490
00-10320	Farmington	490
00-10605	Farmington	540
00-10507	Farmington	540
00-10386	Hobbs	

00-10631	Hobbs	
00-10417	Hobbs	
00-10483	Hobbs	900
00-10486	Hobbs	1200
00-10283	Hobbs	1300
00-10222	Hobbs	1300
00-10666	Lovington	
00-10718	Portales	800
00-10560	Portales	1000
00-10365	Portales	1200
00-10366	Portales	1400
00-10569	Roswell	
00-10528	Roswell	
98-17785	Roswell	
00-10411	Roswell	
00-10509	Roswell	
00-10406	Roswell	
00-10353	Roswell	
00-10563	Roswell	
00-10640	Roswell	
97-15377	Roswell	
00-10562	Roswell	
00-10478	Roswell	
00-10532	Roswell	
00-10535	Roswell	
00-10357	Roswell	470
00-10298	Roswell	500
00-10474	Roswell	500
00-10360	Roswell	550

00-10362	Roswell	550
00-10416	Roswell	550
00-10226	Roswell	550
00-10621	Roswell	550
00-10225	Roswell	550
00-10259	Roswell	550
00-10168	Roswell	550
00-10534	Roswell	550
00-10473	Roswell	550
99-16417	Roswell	550
00-10689	Roswell	550
00-10449	Roswell	550
00-10692	Roswell	550
00-10475	Roswell	625
00-10265	Roswell	675
00-10716	Roswell	688
00-10711	Roswell	688
00-10221	Roswell	688
00-10614	Roswell	688
00-10634	Roswell	688
00-10524	Roswell	688
00-10297	Roswell	700
00-10476	Roswell	725
00-10755	Roswell	750
00-10678	Roswell	775
00-10266	Roswell	814
00-10364	Roswell	835
00-10565	Roswell	839
00-10568	Roswell	860

00-10355	Roswell	875
00-10354	Roswell	875
00-10753	Roswell	900
00-10479	Roswell	900
00-10481	Roswell	900
00-10754	Roswell	900
00-10325	Roswell	900
00-10358	Roswell	900
00-10480	Roswell	900
00-10756	Roswell	900
00-10625	Roswell	940
00-10618	Roswell	946
00-10472	Roswell	946
00-10240	Roswell	946
00-10237	Roswell	946
00-10537	Roswell	946
00-10321	Roswell	965
00-10749	Ruidoso	606
00-10619	Ruidoso	750
00-10757	Ruidoso	750

EXHIBIT D - FEES SORTED BY AMOUNT

99-14321	Albuquerque	
00-10731	Albuquerque	
00-16611	Albuquerque	
00-10640	Roswell	
00-10631	Hobbs	
00-10666	Lovington	
00-10886	Albuquerque	
97-15377	Roswell	
00-10353	Roswell	
00-10411	Roswell	
00-10406	Roswell	
98-16637	Albuquerque	
00-10386	Hobbs	
98-12961	Farmington	
00-10417	Hobbs	
00-10478	Roswell	
00-10487	Clovis	
00-10509	Roswell	
98-17785	Roswell	
00-10528	Roswell	
00-10535	Roswell	
00-10532	Roswell	
99-13493	Clovis	
00-10563	Roswell	
00-10569	Roswell	
00-10562	Roswell	
00-10357	Roswell	470
00-10604	Farmington	490

00-10608	Farmington	490
00-10323	Farmington	490
00-10320	Farmington	490
00-10474	Roswell	500
00-10610	Clovis	500
00-10298	Roswell	500
00-10507	Farmington	540
00-10605	Farmington	540
00-10226	Roswell	550
00-10225	Roswell	550
00-10596	Albuquerque	550
00-10376	Albuquerque	550
99-16417	Roswell	550
00-10168	Roswell	550
00-10259	Roswell	550
00-10689	Roswell	550
00-10416	Roswell	550
00-10314	Albuquerque	550
00-10449	Roswell	550
00-10735	Albuquerque	550
00-10534	Roswell	550
00-10425	Albuquerque	550
00-10692	Roswell	550
00-10621	Roswell	550
00-10362	Roswell	550
00-10360	Roswell	550
00-10473	Roswell	550
00-10612	Clovis	600
00-10776	Albuquerque	600

00-10749	Ruidoso	606
00-10475	Roswell	625
00-10430	Albuquerque	650
00-10265	Roswell	675
00-10221	Roswell	688
00-10614	Roswell	688
00-10711	Roswell	688
00-10524	Roswell	688
00-10634	Roswell	688
00-10716	Roswell	688
00-10297	Roswell	700
00-10476	Roswell	725
00-10755	Roswell	750
00-10757	Ruidoso	750
00-10619	Ruidoso	750
00-10678	Roswell	775
00-10718	Portales	800
00-10266	Roswell	814
00-10364	Roswell	835
00-10565	Roswell	839
00-10568	Roswell	860
00-10713	Alamogordo	875
00-10715	Clovis	875
00-10355	Roswell	875
00-10664	Clovis	875
00-10354	Roswell	875
00-10480	Roswell	900
00-10325	Roswell	900
00-10479	Roswell	900

00-10358	Roswell	900
00-10483	Hobbs	900
00-10481	Roswell	900
00-10753	Roswell	900
00-10754	Roswell	900
00-10756	Roswell	900
00-10359	Carlsbad	918
00-10625	Roswell	940
00-10237	Roswell	946
00-10472	Roswell	946
00-10618	Roswell	946
00-10240	Roswell	946
00-10537	Roswell	946
00-10321	Roswell	965
00-10560	Portales	1000
00-10365	Portales	1200
00-10486	Hobbs	1200
00-10222	Hobbs	1300
00-10283	Hobbs	1300
00-10366	Portales	1400
		average fee 742
		median fee 688